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13 UNITED STATES DISTRICT COURT

14 SOUTHERN DISTRICT OF CALIFORNIA

15 UNITED STATES OF AMERICA,) Criminal Case No. 07CR3021-WQH
16)
17 Plaintiff,) DATE: February 4, 2008
18) TIME: 2:00 p.m.
19 v.)
20) GOVERNMENT'S MOTION FOR
21 PEDRO CRUZ-TERCERO,) RECIPROCAL DISCOVERY
22)
23 Defendant.) TOGETHER WITH MEMORANDUM OF
24) POINTS AND AUTHORITIES
25)
26)
27)
28)

11 COMES NOW the plaintiff, UNITED STATES OF AMERICA, by and through
12 its counsel, Karen P. Hewitt, United States Attorney, and Christopher
13 P. Tenorio, Assistant United States Attorney, and hereby files its
14 motion for reciprocal discovery. Said motion is based upon the files
15 and records of the case, together with the attached Memorandum of
16 Points and Authorities.

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1 **I.**2 **INTRODUCTION**

3 The Government incorporates by reference its Statement of Facts
 4 provided in its Response and Opposition to Defendants' Motions, filed
 5 under separate cover.

6 **II.**7 **GOVERNMENT'S MOTION FOR RECIPROCAL DISCOVERY**8 **A. THE GOVERNMENT IS ENTITLED TO RULE 16(B) DISCOVERY**

9 The Defendant has invoked Federal Rule of Criminal Procedure
 10 16(a)(1), (C) and (D) in his motion for discovery and the Government
 11 has voluntarily complied with the requirements of those rules. Thus,
 12 pursuant to Rule 16(b), the Government is entitled to certain
 13 reciprocal discovery. Under Rule 16(b)(1)(A):

14 If the defendant requests disclosure under subdivision
 15 (a)(1)(C) or (D) of this rule, upon compliance with such
 16 request by the Government, the defendant, on request of the
 17 government, shall permit the Government to inspect and copy
 18 or photograph books, papers, documents, photographs,
 tangible objects, or copies or portions thereof, which are
 within the possession, custody, or control of the defendant
 and which the defendant intends to introduce as evidence-in-chief at the trial.

19 If the defendant requests disclosure under subdivision
 20 (a)(1)(C) or (D) of this rule, upon compliance with such
 21 request by the Government, the defendant, on request of the
 22 Government, shall permit the Government to inspect and copy
 23 or photograph any results or reports of physical or mental
 24 examinations and of scientific tests or experiments made in
 connection with the particular case, or copies thereof,
 within the possession or control of the defendant, which
 the defendant intends to introduce as evidence in chief at
 the trial or which were prepared by a witness whom the
 defendant intends to call at the trial when the results or
 reports relate to his testimony.

25
 26 Fed. R. Crim. P. 16(b)(1)(A).

27 The Government, pursuant to Rule 16(b), hereby requests the
 28 Defendant to permit the Government to inspect, copy, and photograph

1 any and all books, papers, documents, photographs, tangible objects,
2 or make copies of portions thereof, which are within the possession,
3 custody or control of the Defendant and which he intends to introduce
4 as evidence in his case-in-chief at trial.

5 The Government further requests permission to inspect and copy
6 or photograph any results or reports of physical or mental
7 examinations and of scientific tests or experiments made in connection
8 with this case, which are in the possession or control of the
9 Defendant, which he intends to introduce as evidence-in-chief at the
10 trial or which were prepared by a witness whom the Defendant intends
11 to call as a witness. The Government also requests that the court
12 make such orders as it deems necessary under Rule 16(d)(1) and (2) to
13 ensure that the Government receives the discovery to which it is
14 entitled.

15 **B. THE GOVERNMENT IS ENTITLED TO RULE 26.2 DISCOVERY**

16 Federal Rule of Criminal Procedure 26.2 requires the production
17 of prior statements of all witnesses, except defendants. The rule
18 requires reciprocal production of Jencks statements, stating in
19 relevant part:

20 After a witness other than the defendant has testified on
21 direct examination, the court, on motion of a party who did
22 not call the witness, shall order the attorney . . . to
23 produce, for the examination and use of the moving party,
any statement of the witness that is in their possession
and that relates to the subject matter concerning which the
witness has testified.

24 Fed. R. Crim. P. 26.2(a).

25 Consistent with the Jencks Act, Rule 26.2 requires witnesses'
26 statements to be submitted after the witnesses have testified.
27 Therefore, the Government hereby requests that Defendant be ordered
28 to supply all prior statements of defense witnesses on or before a

1 date sufficiently prior to the trial to enable preparation for use at
2 trial. The Court should order Defendant to produce all such
3 statements regardless of their form, including but not limited to tape
4 recordings, handwritten, and typed notes and reports.

5 **III.**

6 **CONCLUSION**

7 Based on the foregoing, the Court should grant the Government's
8 motion for reciprocal discovery.

9 DATED: February 4, 2008

10 Respectfully submitted,

11 KAREN P. HEWITT
12 United States Attorney

13 *s/Christopher P. Tenorio*
14 CHRISTOPHER P. TENORIO
15 Assistant U.S. Attorney

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,) Criminal Case No. 07CR3021-WQH
Plaintiff,) **CERTIFICATE OF SERVICE**
v.)
PEDRO CRUZ-TERCERO,)
Defendant.)

IT IS HEREBY CERTIFIED that:

I, CHRISTOPHER P. TENORIO, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

15 I am not a party to the above-entitled action. I have caused
16 service of **GOVERNMENT'S MOTION FOR RECIPROCAL DISCOVERY** on the
17 following party by electronically filing the foregoing with the Clerk
18 of the District Court using its ECF System, which electronically
19 notifies them:

Daniel Casillas, Esq.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 4, 2008

Respectfully submitted,

KAREN P. HEWITT
United States Attorney

s/Christopher P. Tenorio
CHRISTOPHER P. TENORIO
Assistant U.S. Attorney